

PERSONNEL

MERIT SYSTEM BOARD

General Rules and Department Organization

Appeals, Discipline and Separations

Suspensions on the Record

Proposed Amendments: N.J.A.C. 4A:1-1.3 and 4A:2-2.4

Authorized By: Merit System Board, Rolando Torres, Jr., Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(a), 11A:2-6(d), and 11A:2-20.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006- .

A public hearing concerning the proposed amendments will be held on:

Thursday, July 20, 2006, at 3:00 P.M.

Merit System Board Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal in the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by September 1, 2006 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Department of Personnel

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

In January 2006, the Commissioner of Personnel (Commissioner) received from Joseph J. Doherty, Director, Human Resources and Labor Relations, Department of Labor and Workforce Development, a petition for rulemaking concerning N.J.A.C. 4A:1-1.3 and 4A:2-2.4. The petitioner requested that the Merit System Board consider proposing rule amendments permitting an appointing authority to impose a “suspension on the record” on an employee under limited circumstances. He stated that the purpose of the amendments would be to “...give the parties in a progressive disciplinary matter the flexibility to consider a suspension for record purposes as an additional tool in arriving at a fair penalty and a meaningful resolution.”

The petitioner noted that the amendments would provide that the parties (e.g., the appointing authority and the employee) may agree in writing to the suspension on the record. This suspension would be treated, for record purposes, as if the penalty were a suspension without pay. He indicated that the suggested amendments are within the Board’s authority, pursuant to N.J.S.A. 11A:2-20, to regulate the types of disciplinary action that an appointing authority may take. He further indicated that the amendments had already been reviewed by the Office of Employee Relations in the Governor’s Office. See 38 N.J.R. 1085(a).

Upon review of the petition and submission of the petition to the Labor, Police, and Fire Advisory Boards for their comment, the Commissioner has decided that a formal proposal of the amendments suggested in the petition is appropriate. Therefore,

the Board proposes the amendments described above. These would include a proposed amendment to N.J.A.C. 4A:1-1.3, Definitions, in which a new definition would be added for the term “suspension on the record.” The definition would provide that a suspension for disciplinary reasons may be imposed for record purposes only, without loss of pay, benefits or seniority.

The Board further proposes an amendment to N.J.A.C. 4A:2-2.4(b) to permit the imposition of a suspension on the record in both State and local service and also proposes a new subsection (e) setting forth the circumstances under which a suspension on the record may be imposed. The proposed new subsection (e) would additionally provide that the suspension on the record will have the same force and effect as a suspension actually served by the employee for purposes of progressive discipline.

As the Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

It is anticipated that the proposed amendments to N.J.A.C. 4A:1-1.3 and 4A:2-2.4 would have a positive social impact. A suspension on the record would be imposed on an employee only when the appointing authority and the employee or the employee’s majority representative agree in writing to such a penalty. Therefore, this type of

penalty would not be unilaterally imposed by the appointing authority. Moreover, appointing authorities that do not wish to utilize this form of disciplinary action would not be required to do so under this proposal. Also, the employee's and the appointing authority's needs, the morale and the workload of co-workers, and the seriousness of the infraction are all factors that could be considered in reaching such an agreement. The likelihood that such factors would be considered in coming to an agreement to impose a suspension on the record would have a positive social impact on all parties involved.

Economic Impact

The Board anticipates a positive economic impact as a result of the proposed amendments. If the employee's absence from work due to a suspension without pay would result in overtime costs, this would be avoided by an agreement to impose a suspension on the record. Also, such a suspension would not hurt the employee economically as he or she would still be at work and getting paid. Moreover, the penalty could be used in determining a penalty for a future infraction, in accordance with principles of progressive discipline, but for the present disciplinary matter the employee would incur no monetary loss.

Federal Standards Statement

A Federal standards analysis is not necessary for the proposed amendments to

N.J.A.C. 4A:1-1.3 and 4A:2-2.4. The proposed amendments concern discipline of employees in State and local service. Therefore, the proposed amendments are governed solely by State law.

Jobs Impact

It is not anticipated that the proposed amendments would have any jobs impact. No jobs would be created or lost due to the proposed amendments.

Agriculture Industry Impact

It is not anticipated that the proposed amendments would have any agriculture industry impact. The proposed amendments concern the discipline of employees in State and local service and would not affect New Jersey's agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the proposed amendments would have any impact on

the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposal follows (additions indicated in boldface thus):

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4A:1-1.3 Definitions

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly states otherwise:

...

“Suspension on the record” means a suspension for disciplinary reasons imposed for record purposes only, without loss of pay, benefits or seniority.

...

4A:2-2.4 Limitations on suspensions and fines

(a) (No change.)

(b) In local service, the appointing authority may provide that a suspension be with or without pay. In State service, suspensions shall be without pay unless directly authorized to be with pay by the department head. In both local and State service, a suspension on the record may be imposed in accordance with (e) below.

(c) – (d) (No change.)

(e) An appointing authority may impose a suspension on the record when the appointing authority and the employee, or, where the employee is covered by a collective negotiations agreement, the employee's majority representative, agree in writing that, for purposes of progressive discipline, the employee will receive a suspension on the record and that it will have the same force and effect for purposes of future disciplinary actions as a suspension actually served by the employee.